

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF IOWA  
EASTERN DIVISION**

MARY HANNAN,

Plaintiff,

vs.

KENDALL/HUNT PUBLISHING  
COMPANY,

Defendant.

No. C01-1006

INSTRUCTIONS TO THE JURY

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INTRODUCTION/DUTIES/BURDENINSTRUCTION NO. 1

## MEMBERS OF THE JURY:

Now that you have heard the evidence, it becomes my duty to give you the instructions of the Court as to the law applicable to this case.

It is your duty as jurors to follow the law as stated in the instructions of the Court, and to apply the rules of law so given to the facts as you find them from the evidence.

Counsel will quite properly refer to some of the governing rules of law in their arguments. If, however, any difference appears to you between the law as stated by counsel and that stated by the Court in these instructions, you of course are to be governed by the instructions.

You are not to judge the wisdom of any rule of law stated by the Court. Regardless of any opinion you may have as to what the law ought to be, it would be a violation of your sworn duty to base a verdict upon any other view of the law than that given in the instructions of the Court; just as it would be a violation of your sworn duty, as judges of the facts, to base a verdict upon anything but the evidence in the case.

Justice through trial by jury must always depend upon the willingness of each individual juror to seek the truth as to the facts from the same evidence presented to all the jurors; and to arrive at a verdict by applying the same rules of law, as given in the instructions of the Court.

This case should be considered and decided by you as an action between persons of equal standing in the community. A corporation is entitled to the same fair trial at your hands as a private individual. All persons, including corporations, stand equal before the law, and are to be dealt with as equals in a court of justice.

A corporation is liable for the wrongful acts of an officer, agent or employee if the acts are done in the scope of the employment.

INSTRUCTION NO. 1 (Cont'd)

Whenever a party must prove something they must do so by the preponderance of the evidence. Preponderance of the evidence is evidence that is more convincing than opposing evidence. Preponderance of the evidence does not depend upon the number of witnesses testifying on one side or the other.

EVIDENCEINSTRUCTION NO. 2

You shall base your verdict only upon the evidence and these instructions. Evidence is: (1) testimony in person or by deposition; (2) exhibits received by the court; and (3) any other matter admitted. Evidence may be direct or circumstantial. The weight to be given any evidence is for you to decide. The following are not evidence: (1) statements, arguments, questions and comments by the lawyers; (2) objections and rulings on objections; (3) testimony I told you to disregard; and (4) anything you saw or heard about this case outside the courtroom.

You will decide the facts from the evidence. Consider the evidence using your observations, common sense and experience. You must try to reconcile any conflicts in the evidence; but, if you cannot, you will accept the evidence you find more believable. In determining the facts, you may have to decide what testimony you believe. You may believe all, part or none of any witness' testimony. There are many factors which you may consider in deciding what testimony to believe, for example: (1) whether the testimony is reasonable and consistent with other evidence you believe; (2) the witness' appearance, conduct, intelligence, memory and knowledge of the facts; (3) whether the witness has given statements in the past that are inconsistent with his or her testimony at trial; and (4) the witness' interest in the trial, their motive, candor, bias and prejudice.

A witness may be discredited or impeached by contradictory evidence; or by evidence that at some other time the witness has said or done something, or has failed to say or do something, which is inconsistent with the witness' present testimony.

If you believe that any witness has been impeached and thus discredited, it is your exclusive province to give the testimony of that witness such credibility, if any, as you may think it deserves.

INSTRUCTION NO. 2 (Cont'd)

Certain testimony has been read into evidence from a deposition. A deposition is testimony taken under oath before the trial and preserved in writing or on videotape. Consider that testimony to the best of your ability as if it had been given live in court.

During this trial, you have heard the word "interrogatory." An interrogatory is a written question asked by one party of another, who must answer it under oath in writing. Consider interrogatories and the answers to them as if the questions had been asked and answered here in court.

You have heard testimony from persons described as experts. Persons who have become experts in a field because of their education and experience may give their opinion on matters in that field and the reasons for their opinion.

Consider expert testimony just like any other testimony. You may accept it or reject it. You may give it as much weight as you think it deserves, considering the witness' education and experience, the reasons given for the opinion, and all the other evidence in the case.

ELEMENTS OF THE CLAIMINSTRUCTION NO. 3

The claim made by the plaintiff is based on a federal law known as the Americans with Disabilities Act, which will be referred to in these instructions as the ADA.

Under the ADA, an employer may not deprive a qualified individual with a disability of an employment opportunity because of the disability, if the disability does not interfere with the essential functions of the position. An employer who violates the statute may be liable for monetary damages.

The plaintiff, Mary Hannan, seeks damages against the defendant, Kendall/Hunt Publishing Company, for intentional unlawful discrimination under the ADA. The defendant denies the plaintiff's claim.

To establish a claim of disability discrimination under the ADA, the plaintiff must prove the following elements by a preponderance of the evidence:

1. The plaintiff has a disability within the meaning of the ADA;
2. The plaintiff was a qualified individual who could perform all of the essential functions of her position with or without reasonable accommodation; and
3. The plaintiff's disability was a motivating factor in the defendant's decision to terminate plaintiff's employment on January 7, 2000. It is not necessary for plaintiff to prove that her disability was the sole or exclusive reason for her termination.

If you find that each of the elements on which the plaintiff has the burden of proof has been proved, your verdict should be for the plaintiff. If, on the other hand, the plaintiff has failed to prove any of these elements, your verdict should be for the defendant.

As an employer, defendant Kendall/Hunt Publishing Company has the right to make business decisions -- such as the decision whether to terminate plaintiff Mary Hannan's employment for good reason, bad reason, or for no reason at all, absent discrimination based

INSTRUCTION NO. 3 (Cont'd)

on disability. You should not find that the defendant's decision as to whether to terminate plaintiff's employment is unlawful just because you may disagree with the wisdom of defendant's stated reasons or because you believe the decision was harsh or unreasonable. The question for you to decide is whether disability was a motivating factor in the decision to terminate plaintiff's employment, not whether the termination was a good or bad idea from a business standpoint.

DEFINITIONS UNDER THE ADAINSTRUCTION NO. 4Disability

The first element of the ADA claim that the plaintiff must prove is that the plaintiff has a recognized disability under the ADA on January 7, 2000. A disability under the ADA is a physical impairment that substantially limits one or more of the major life activities of such individual, a record of such a physical impairment, or being regarded as having such a physical impairment. The terms disability and physical impairment include any physiological disorder, condition, or loss affecting one or more of the following body systems: neurological, musculoskeletal, special sense organs, respiratory, cardiovascular, digestive, genito-urinary, hemic and lymphatic, skin, and endocrine.

Major life activities are the normal activities of living which a non-disabled person can do with little or no difficulty, such as caring for oneself, performing manual tasks, walking, sleeping, seeing, hearing, speaking, breathing, learning, reproduction, and interacting with others. A limitation is substantial if the disabled person is unable to perform the activity or is significantly restricted in doing so. Factors to consider in deciding whether a major life activity is substantially limited include: (1) the nature and severity of the impairment; (2) the expected duration of the impairment; and (3) the permanent or long-term impact of the impairment.

To prove that a person is actually disabled, the person must be substantially limited in one or more major life activities.

To prove that a person has a record of disability, the person must have a history of a mental or physical impairment that substantially limits one or more major life activities. However, the mere diagnosis of cancer, alone, does not constitute a record of a disability.

To prove that a person has a perceived disability, the person must be regarded as or perceived as being substantially limited in one or more major life activities. A perceived



INSTRUCTION NO. 4 (Cont'd)

disability is one based on speculation, stereotype or myth about the limiting effects of the plaintiff's impairment, and involves the treatment of the plaintiff as being substantially limited in a major life activity.

You have heard the definition of disability under the Americans with Disabilities Act. That is the definition you should apply. You should not apply or consider any other definition of disability, including the definition relevant to social security benefits or private insurance disability benefits.

Qualified Individual

The second element of the ADA claim that the plaintiff must prove is that the plaintiff is a qualified individual under the ADA.

The term qualified individual means an individual with the disability who, with or without a reasonable accommodation, can perform the essential functions of the employment position that such individual holds. The individual must satisfy the requisite skill, experience, education, and other job-related requirements of the employment position.

Essential Functions of the Position

If you find that the plaintiff was qualified for the employment position, plaintiff must prove, by a preponderance of the evidence, that she was able to perform all of the essential functions of the employment position with or without reasonable accommodation.

An essential function of the employment position means the fundamental job duties of the employment position the plaintiff holds. It does not include the marginal functions that may occur through the course of the job.

You must consider the employer's judgment as to what functions of the job are essential. If Kendall/Hunt Publishing Company prepared before January 7, 2000 a written description for plaintiff's job, this description is evidence of the essential functions of the job which you must consider. However, although you should consider the employer's view

INSTRUCTION NO. 4 (Cont'd)

as to the essential functions of the job, not every function becomes “essential” merely by inclusion in a job description.

Other factors that may bear upon whether a job function is essential include, but are not limited to:

1. Whether the reason the position exists is to perform that function;
2. Whether there are a limited number of employees available among whom the performance of the job function can be distributed;
3. Whether the job function is highly specialized, and the person in that particular position is hired for his or her expertise or ability to perform the particular function;
4. The amount of time spent performing the job function; and
5. The consequences of not requiring the individual holding the position to perform the function.

REASONABLE ACCOMMODATIONINSTRUCTION NO. 5

If you find the plaintiff qualified for the position but able to perform the job only with some form of accommodation, then you must determine whether the defendant had a duty to provide reasonable accommodation in January of 2000.

To establish the defendant's duty to provide reasonable accommodation, plaintiff must prove, by a preponderance of the evidence, both of the following elements:

1. The plaintiff informed the defendant of the need for accommodation due to a disability, and
2. The defendant could have made reasonable accommodation that would have enabled the plaintiff to perform the essential functions of the job.

Under the ADA, reasonable accommodation by the defendant may include, but is not limited to:

1. Job restructuring;
2. Part-time or modified work schedule;
3. Assignment to a vacant position.

Reasonable accommodation does not include changing or eliminating any essential function of employment, shifting any of the essential functions of the subject employment to others, or creating a new position for the disabled employee.

Interactive Process

The employer must have knowledge that reasonable accommodation is required. Therefore, it is generally the responsibility of the plaintiff to request the provision of reasonable accommodation. Once the plaintiff has made such a request, the parties must engage in an interactive process in which the employer and the employee must work together in good faith to determine what precise

INSTRUCTION NO. 5 (Cont'd)

accommodations are necessary. An employer that fails to participate in good faith in the interactive process cannot later complain that it did not know of reasonable accommodation that the interactive process could have revealed. An employer cannot require an employee to be 100% healed or to have all restrictions removed before the employer attempts to find reasonable accommodation for the employee.

Undue hardship

Once an employee shows that an accommodation is possible, the burden shifts to the employer to show that the accommodation would create an undue hardship. An accommodation requested by the plaintiff that creates an undue hardship on the employer is not reasonable. A defendant is not required to provide an accommodation that will impose an undue hardship on the operation of the defendant's business. The defendant must prove undue hardship by the preponderance of the evidence.

The term undue hardship means an action requiring significant difficulty or expense. It takes into account the financial realities of the particular defendant and refers to any accommodation that would be unduly costly, extensive, substantial, or disruptive, or that would fundamentally alter the nature or operation of the business unit.

The factors to be considered in deciding whether an accommodation would cause undue hardship include:

1. The nature and cost of the accommodation;
2. The overall impact of the proposed accommodation on the operation of the defendant's business unit, including the impact on other employees and the ability to conduct business.

Preemployment Inquiries Concerning Disabilities

INSTRUCTION NO. 5 (Cont'd)

There has been evidence concerning plaintiff's subsequent employment application at McGraw Hill. To assist in your consideration of this evidence, the court provides the following instruction.

An employer may not make preemployment inquiries as to whether an applicant has a disability or as to the nature and extent of that disability. However, the employer may make preemployment inquiry into the ability of an applicant to perform job-related functions. Once employed, the employer and employee can then go through the interactive process to identify and attempt to accommodate any disability.

COMPENSATORY DAMAGESINSTRUCTION NO. 6

If you find in favor of plaintiff, then you must award plaintiff such sum as you find by a preponderance of the evidence will fairly and justly compensate plaintiff for any damages you find plaintiff sustained as a direct result of defendant's decision to end her employment. Plaintiff's claim for compensatory damages includes two distinct types of damages and you must consider them separately:

Back Pay

First, you must determine the amount of any wages and fringe benefits plaintiff would have earned in her employment with defendant from January 10, 2000 up until the date of plaintiff's commencement of employment with McGraw-Hill Publishing Company on March 9, 2000. We refer to this as "back pay." The parties have agreed that if plaintiff prevails, she is entitled to \$4,000 in back pay.

Emotional Distress Damages

Second, you must determine the amount of any emotional distress damages sustained in the past as a result of plaintiff's termination. Emotional distress may include, but is not limited to, mental anguish, nervousness, worry, anxiety, irritability, disappointment, depression, confusion, disorientation, apprehension, embarrassment, a feeling of uselessness or loss of enjoyment of life.

The amount you assess, if any, for some items of damages cannot be measured by any exact or mathematical standard. You must use your sound judgment based upon an impartial consideration of the evidence. Your judgment must not be exercised arbitrarily or out of sympathy or prejudice, for or against the parties.

In arriving at an item of damage, you cannot arrive at a figure by taking down the estimate of each juror as to an item of damage and agreeing in advance that the average of those estimates shall be your item of damage.

A party cannot recover duplicate damages. Do not allow amounts awarded under one item of damage to be included in any amount awarded under another item of damage.

INSTRUCTION NO. 6 (Cont'd)

The amounts, if any, you find for each of the above items will be used to answer the special verdicts.

PUNITIVE DAMAGES  
INSTRUCTION NO. 7

You may, but are not required to, award punitive damages on Mary Hannan's claim if you find that (1) Kendall Hunt acted with malice or reckless disregard for, and did not make a good faith effort to comply with, the law, and (2) it is appropriate to punish Kendall Hunt or to deter Kendall Hunt and others from similar conduct in the future. A defendant acted with "malice or reckless disregard for the law" if the plaintiff has proved by a preponderance of the evidence that the defendant knew that its conduct was in violation of the law prohibiting disability discrimination, or acted with reckless disregard for that law.

In determining the amount of punitive damages, if any, to award on her claim, you should consider how offensive the defendant's conduct was; what amount is needed, considering the defendant's financial condition, to punish the defendant for its wrongful conduct toward the plaintiff and to prevent a repetition of that wrongful conduct in the future; whether the amount of punitive damages bears a reasonable relationship to the actual damages awarded on that particular claim; and what sum would be sufficient to deter other similar employers from similar wrongful conduct in the future.



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DELIBERATIONS

INSTRUCTION NO. 8

Upon retiring you shall select a foreperson. It will be his or her duty to see discussion is carried on in an orderly fashion, the issues are fully and freely discussed, and each juror is given an opportunity to express his or her views. Your attitude at the beginning of your deliberations is important. It is not a good idea for you to take a position before thoroughly discussing the case with the other jurors. Remember you are not partisans or advocates, but are judges -- judges of the facts. Your sole interest is to find the truth and do justice.

I am giving you the following verdict form. If you all agree to the verdict, it will be signed by each juror. When you have agreed upon your verdict and have signed it, inform the Court Attendant.

\_\_\_\_\_  
DATE

\_\_\_\_\_  
JOHN A. JARVEY  
Chief Magistrate Judge  
UNITED STATES DISTRICT COURT

INSTRUCTION NO. \_\_\_\_ (Cont'd)

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Plaintiff,

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Defendant.

No. C01-1006

VERDICT FORM

**QUESTION 1:**

We, the Jury, find in favor of:

(Check One)

\_\_\_\_\_ Mary Hannan

\_\_\_\_\_ Kendall/Hunt Publishing Company

on Mary Hannan's claim of disability discrimination.

(If you find in favor of Mary Hannan, answer Questions 2 through 4. If you find in favor of Kendall/Hunt Publishing Company, sign the Verdict Form and inform the Court Attendant.)

**QUESTION 2:**

INSTRUCTION NO. \_\_\_\_ (Cont'd)

We find that Mary Hannan was substantially limited on January 7, 2000, in the following major life activity or activities:

(Check Any That Apply)

_____	breathing
_____	walking
_____	eating
_____	social interaction
_____	reproduction
_____	exertion
_____	fighting infection

**QUESTION 3:**

We award compensatory damages (Instruction No. 6) as follows:

\$ _____	Back Pay
\$ _____	Emotional Distress
\$ _____	TOTAL

**QUESTION 4:**

We award punitive damages (Instruction No. 7) in the following amount. Record "0" if you do not award punitive damages.

\$ \_\_\_\_\_

INSTRUCTION NO. \_\_ (Cont'd)

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